

## § 242.1

APPENDIX B TO PART 242—PROCEDURES FOR SUBMISSION AND APPROVAL OF CONDUCTOR CERTIFICATION PROGRAMS

APPENDIX C TO PART 242—PROCEDURES FOR OBTAINING AND EVALUATING MOTOR VEHICLE DRIVING RECORD DATA

APPENDIX D TO PART 242—MEDICAL STANDARDS GUIDELINES

APPENDIX E TO PART 242—APPLICATION OF IRREVOCABLE EVENTS

AUTHORITY: 49 U.S.C. 20103, 20107, 20135, 20138, 20162, 20163, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

SOURCE: 76 FR 69841, Nov. 9, 2011, unless otherwise noted.

### Subpart A—General

#### § 242.1 Purpose and scope.

(a) The purpose of this part is to ensure that only those persons who meet minimum Federal safety standards serve as conductors, to reduce the rate and number of accidents and incidents and to improve railroad safety.

(b) This part prescribes minimum Federal safety standards for the eligibility, training, testing, certification and monitoring of all conductors to whom it applies. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements consistent with this part.

(c) The conductor certification requirements prescribed in this part apply to any person who meets the definition of conductor contained in § 242.7, regardless of the fact that the person may have a job classification title other than that of conductor.

#### § 242.3 Application and responsibility for compliance.

(a) This part applies to all railroads, except:

(1) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (*i.e.*, plant railroads, as defined in § 242.7);

(2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 242.7; or

(3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(b) Although the duties imposed by this part are generally stated in terms

## 49 CFR Ch. II (10–1–12 Edition)

of the duty of a railroad, each person, including a contractor for a railroad, who performs any function covered by this part, must perform that function in accordance with this part.

#### § 242.5 Effect and construction.

(a) FRA does not intend, by use of the term conductor in this part, to alter the terms, conditions, or interpretation of existing collective bargaining agreements that employ other job classification titles when identifying a person who is the crew member in charge of a movement that requires a locomotive engineer.

(b) FRA does not intend by issuance of these regulations to alter the authority of a railroad to initiate disciplinary sanctions against its employees, including managers and supervisors, in the normal and customary manner, including those contained in its collective bargaining agreements.

(c) Except as provided in § 242.213, nothing in this part shall be construed to create or prohibit an eligibility or entitlement to employment in other service for the railroad as a result of denial, suspension, or revocation of certification under this part.

(d) Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to removal from service or other adverse action taken as a consequence of this part.

#### § 242.7 Definitions.

As used in this part—

*Administrator* means the Administrator of the FRA or the Administrator's delegate.

*Alcohol* means ethyl alcohol (ethanol) and includes use or possession of any beverage, mixture, or preparation containing ethyl alcohol.

*Conductor* means the crewmember in charge of a “train or yard crew” as defined in part 218 of this chapter. *See also* the definition of “passenger conductor” in this section.

*Controlled substance* has the meaning assigned by 21 U.S.C. 802 and includes

all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301–1316).

*Drug* means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

*Drug and alcohol counselor (DAC)* means a person who meets the credentialing and qualification requirements of a “Substance Abuse Professional” (SAP), as provided in 49 CFR part 40.

*Dual purpose vehicle* means a piece of on-track equipment that is capable of moving railroad rolling stock and may also function as roadway maintenance equipment.

*File, filed and filing* mean submission of a document under this part on the date when the Docket Clerk receives it, or if sent by mail, the date mailing was completed.

*FRA* means the Federal Railroad Administration.

*FRA representative* means the FRA Associate Administrator for Railroad Safety/Chief Safety Officer and the Associate Administrator’s delegate, including any safety inspector employed by the Federal Railroad Administration and any qualified state railroad safety inspector acting under part 212 of this chapter.

*Ineligible or ineligibility* means that a person is legally disqualified from serving as a certified conductor. The term covers a number of circumstances in which a person may not serve as a certified conductor. Revocation of certification pursuant to § 242.407 and denial of certification pursuant to § 242.401 are two examples in which a person would be ineligible to serve as a conductor. A period of ineligibility may end when a condition or conditions are met. For example, when a person meets the conditions to serve as a conductor following an alcohol or drug violation pursuant to § 242.115.

*Job aid* means information regarding other than main track physical characteristics that supplements the operating instructions of the territory over which the locomotive or train movement will occur. See definitions of

“main track” and “physical characteristics” in this section. A *job aid* may consist of training on the territory pursuant to § 242.119, maps, charts or visual aids of the territory, or a person or persons to contact who are qualified on the territory and who can describe the physical characteristics of the territory. At a minimum, a *job aid* must cover characteristics of a territory including: permanent close clearances, location of permanent derails and switches, assigned radio frequencies in use and special instructions required for movement, if any, and railroad-identified unique operating conditions.

*Joint operations* means rail operations conducted by more than one railroad on the same track regardless of whether such operations are the result of—

- (1) Contractual arrangement between the railroads,
- (2) Order of a governmental agency or a court of law, or
- (3) Any other legally binding directive.

*Knowingly* means having actual knowledge of the facts giving rise to the violation or that a reasonable person acting in the circumstances, exercising due care, would have had such knowledge.

*Locomotive* means a piece of on-track equipment (other than specialized roadway maintenance equipment or a dual purpose vehicle operating in accordance with § 240.104(a)(2) of this chapter):

- (1) With one or more propelling motors designed for moving other equipment;
- (2) With one or more propelling motors designed to carry freight or passenger traffic or both; or
- (3) Without propelling motors but with one or more control stands.

*Locomotive engineer* means any person who moves a locomotive or group of locomotives regardless of whether they are coupled to other rolling equipment except:

- (1) A person who moves a locomotive or group of locomotives within the confines of a locomotive repair or servicing area as provided for in §§ 218.5 and 218.29(a)(1) of this chapter; or
- (2) A person who moves a locomotive or group of locomotives for distances of less than 100 feet and this incidental

movement of a locomotive or locomotives is for inspection or maintenance purposes.

*Locomotive engineer certificate* means a certificate issued pursuant to part 240 of this chapter.

*Main track* means a track upon which the operation of trains is governed by one or more of the following methods of operation: timetable; mandatory directive; signal indication; positive train control as defined in part 236 of this chapter; or any form of absolute or manual block system.

*Medical examiner* means a person licensed as a doctor of medicine or doctor of osteopathy. A medical examiner can be a qualified full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified practitioner designated by the railroad to perform functions in connection with medical evaluations of employees. As used in this rule, the medical examiner owes a duty to make an honest and fully informed evaluation of the condition of an employee.

*On-the-job training* means job training that occurs in the workplace, *i.e.*, the employee learns the job while doing the job.

*Passenger conductor* means a conductor who has also received emergency preparedness training under part 239 of this chapter. *See also* the definition of “conductor” in this section.

*Person* means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

*Physical characteristics* means the actual track profile of and physical location for points within a specific yard or route that affect the movement of a locomotive or train. *Physical characteristics* includes both *main track physical characteristics* (see definition of “main track” in this section) and other than main track physical characteristics.

*Plant railroad* means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility’s own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

*Qualified* means a person who has successfully completed all instruction, training and examination programs required by the employer, and the applicable parts of this chapter and that the person therefore may reasonably be expected to be proficient on all safety related tasks the person is assigned to perform.

*Qualified instructor* means a person who has demonstrated, pursuant to the railroad’s written program, an adequate knowledge of the subjects under instruction and, where applicable, has the necessary operating experience to effectively instruct in the field, and has the following qualifications:

- (1) Is a certified conductor under this part; and
- (2) Has been selected as such by a designated railroad officer, in concurrence with the designated employee representative, where present; or
- (3) In absence of concurrence provided in paragraph (2) of this definition, has a minimum of 12 months service working as a train service employee.

If a railroad does not have designated employee representation, then a person employed by the railroad need not comply with paragraphs (2) or (3) of

this definition to be a *qualified instructor*.

*Railroad* means any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including:

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

*Railroad officer* means any supervisory employee of a railroad.

*Railroad rolling stock* is on-track equipment that is either a "railroad freight car" (as defined in §215.5 of this chapter) or a "passenger car" (as defined in §238.5 of this chapter).

*Remote control operator* (RCO) means a certified locomotive engineer, as defined in §240.7 of this chapter, certified by a railroad to operate remote control locomotives pursuant to §240.107 of this chapter.

*Roadway maintenance equipment* is on-track equipment powered by any means of energy other than hand power which is used in conjunction with maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems.

*Serve* or *service*, in the context of serving documents, has the meaning given in Rule 5 of the Federal Rules of Civil Procedure as amended. Similarly, the computation of time provisions in Rule 6 of the Federal Rules of Civil Procedure as amended are also applicable in this part. *See also* the definition of "filing" in this section.

*Specialized roadway maintenance equipment* is roadway maintenance equipment that does not have the capability to move railroad rolling stock. Any alteration of such equipment that enables it to move railroad rolling

stock will require that the equipment be treated as a dual purpose vehicle.

*Substance abuse disorder* refers to a psychological or physical dependence on alcohol or a drug, or another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation. A substance abuse disorder is "active" within the meaning of this part if the person is currently using alcohol or other drugs, except under medical supervision consistent with the restrictions described in §219.103 of this chapter or has failed to successfully complete primary treatment or successfully participate in aftercare as directed by a DAC or SAP.

*Substance Abuse Professional (SAP)* means a person who meets the qualifications of a substance abuse professional, as provided in part 40 of this title.

*Territorial qualifications* means possessing the necessary knowledge concerning a railroad's operating rules and timetable special instructions including familiarity with applicable *main track and other than main track physical characteristics* of the territory over which the locomotive or train movement will occur.

*Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation* means a tourist, scenic, historic, or excursion operation conducted only on track used exclusively for that purpose (*i.e.*, there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

#### § 242.9 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant